

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R4-2-101	Amend
R4-2-102	Amend
R4-2-103	Amend
R4-2-104	Amend
R4-2-105	Amend
R4-2-201	Amend
R4-2-202	Amend
R4-2-203	Amend
R4-2-204	Amend
R4-2-205	Amend
R4-2-206	Amend
R4-2-207	Amend
R4-2-208	Amend
R4-2-209	Amend
R4-2-210	Amend
R4-2-211	Amend
R4-2-212	Amend
R4-2-213	Amend
R4-2-214	Amend
R4-2-215	Amend
R4-2-216	Amend
R4-2-217	Amend
R4-2-218	Amend
R4-2-219	Repeal
R4-2-301	Amend
R4-2-302	Amend
R4-2-303	Amend
R4-2-304	Amend
R4-2-305	Amend
R4-2-306	Repeal
R4-2-307	Repeal
R4-2-308	Repeal
R4-2-309	Repeal
R4-2-310	Repeal
R4-2-311	Repeal
R4-2-401	Amend

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R4-2-402	Repeal
R4-2-403	Repeal
R4-2-404	Repeal
R4-2-405	Repeal
R4-2-406	Repeal
R4-2-407	Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 23-1387(B) and 23-1389

Implementing statutes: A.R.S. §§ 23-1385, 23-1387(B), 23-1390, 23-1391, and 41-1062

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 8 A.A.R. 1191, March 22, 2002

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Sherry D. Blatner, Rules Specialist

Address: Arizona Department of Agriculture
1688 W. Adams, Room 235
Phoenix, AZ 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-mail: sherry.blatner@agric.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

This rulemaking is initiated to meet commitments made by the Board in the Five-Year Review of its rules approved by the Governor's Regulatory Review Council on November 6, 2001. Language usage is conformed to the current publication standards of the Office of the Secretary of State. The procedures established for hearings are standardized to those available in A.R.S. Title 41, Chapter 6, Article 10. Definitions are added or deleted to provide greater clarity.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

A. The Agricultural Employment Relations Board.

The Board will incur modest expenses related to educating the regulated community on the amendments.

B. Political Subdivision.

Other than the Board, implementation of this rulemaking will directly affect the caseload of the Office of Administrative Hearings.

C. Businesses Directly Affected By the Rulemaking.

The regulated community the Board serves, and their attorneys, will be beneficially affected by the use of the uniform administrative procedures of the Office of Administrative Hearings.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Sherry D. Blatner, Rules Specialist

Address: Arizona Department of Agriculture
1688 W. Adams, Room 235
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10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Board will schedule a public hearing if a written request for a public hearing is made to the person listed in item #4.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD

ARTICLE 1. GENERAL PROVISIONS

Section

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R4-2-104.	Service of Process and Legal Documents
R4-2-105.	Computation of Time

ARTICLE 2. ELECTIONS

Section

R4-2-201.	Contents of Petition for Election
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Section

R4-2-301.	Unfair Labor Practice Charges
R4-2-302.	Form and Contents of Charge
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- R4-2-305. Refusal to Issue Complaint
R4-2-306. ~~Answer~~ Repealed
R4-2-307. ~~Filing of Answer; Service~~ Repealed
R4-2-308. ~~Notice of Hearing; Continuance~~ Repealed
R4-2-309. ~~Consolidation and Severance of Proceedings~~ Repealed
R4-2-310. ~~Discovery and Disclosure~~ Repealed
R4-2-311. ~~Duties and Powers of Trial Examiner~~ Repealed

ARTICLE 4. HEARINGS

Section

- R4-2-401. Hearings
R4-2-402. ~~Conduct of Hearings~~ Repealed
R4-2-403. ~~Intervention~~ Repealed
R4-2-404. ~~Subpoenas and Depositions~~ Repealed
R4-2-405. ~~Motions~~ Repealed
R4-2-406. ~~Board Review of Decisions and Orders~~ Repealed
R4-2-407. Rehearing or Review of Decision; Basis

ARTICLE 1. GENERAL PROVISIONS

R4-2-101. Terms, Definitions

For purposes of this Chapter, the terms listed below are defined as follows: In addition to the definitions provided in A.R.S. § 23-1382, the following terms apply to this Chapter:

1. "Act" means the Agricultural Employment Relations Act, A.R.S. § 23-1381 et seq.
"Administrative Law Judge" or "ALJ" means an individual, or the Board, who sits as an administrative law judge, conducts an administrative hearing in a contested case or an appealable agency action, and makes decisions regarding the contested case or appealable agency decision.
2. "Authorization Period" means the 4 four pay periods immediately preceding the filing of a petition for election ~~pursuant to~~ under A.R.S. § 23-1389(C).
3. "Bargaining Unit" means those employees who share a community of interest with regard to wages and terms and conditions of employment as described in A.R.S. § 23-1389(B).
4. "Board Agent" means any individual acting ~~for and~~ on behalf of the Board, including the Executive Secretary, the General Counsel, ~~Hearing Officers, Trial Examiners,~~ and investigators.
5. "Calendar Year" means the period beginning January 1 and ending December 31.
"Consent Election" means an election held following submission of a voluntary and complete consent election agreement to the Board and the Board's approval of the agreement.
6. "Eligibility Period" means the 3 three pay periods immediately preceding the filing of a petition for election ~~pursuant to~~ under A.R.S. § 23-1389(C).
7. "Executive Secretary" means the Executive Secretary appointed by the Board ~~pursuant to~~ under A.R.S. § 23-1388.
8. "Hearing Officer" means ~~any person appointed by the Board to conduct a hearing in an election proceeding under the Act.~~
"Independent contractor" means an employer engaged in the business of supplying labor to one or more farms or ranches.
9. "Investigator" means any person ~~employed~~ contracted by the Board for the purpose of investigating issues relating to unfair labor practice charges and petitions for election.
10. "Leave of Absence" means an employment status determined by the employer and the employee ~~wherein permitting the employee is permitted to~~ cease work for that employer for a specified period of time.
11. "Pay Period" means the ~~7-day~~ seven-day period utilized by the agricultural employer for payroll purposes. If the agricultural employer does not use a ~~7-day~~ seven-day pay period, pay period means a ~~7-day~~ seven-day period, Sunday through Saturday.
12. "Trial Examiner" means ~~any person appointed by the Board to conduct a hearing in an unfair labor practice proceeding under the Act.~~

R4-2-102. Strikes

- A. ~~Where the employer is an independent contractor engaged in the business of supplying labor to 1 or more farms or ranches, a~~ A dispute between ~~the employer an independent contractor and the~~ agricultural employees or their representative shall not be deemed to be a labor dispute involving the farm or ranch, or the owner, lessee, or operator of that farm or ranch, ~~and picket~~ Picket signs shall clearly state the ~~persons~~ person against whom the employees ~~of or~~ or their representative are conducting the strike.

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- B. ~~Nothing herein shall be deemed to interfere with the right of the~~ The employees or their representative ~~to~~ may advertise their dispute with the employer ~~or otherwise impair their right to and engage in picketing of picket~~ the employer; ~~provided also that the picketing of the employer~~ The picketing shall not interfere with the work of a neutral employers employer or suppliers supplier who ~~are~~ is not involved in the dispute.

R4-2-103. Notice of Appearance; ~~Signing of Pleadings and Documents; Filing of Documents~~

- A. ~~Any~~ The attorney of a party to ~~any a~~ proceeding ~~or matter~~ under investigation by ~~or before~~ the Board shall promptly file a Notice of Appearance with the Board. Once filed, the notice shall remain in effect for the duration of the named proceeding ~~or matter~~, or until the Board is notified, in writing, that authority has been revoked. ~~The Notice of Appearance shall contain the following information:~~
1. ~~The name of the party to the proceeding;~~
 2. ~~The name of the case, and case number if known;~~
 3. ~~The name address, and telephone number of the representative; and~~
 4. ~~The signature of either the party or the attorney, and the date.~~
- B. ~~Whenever any pleading or document is filed by any person in any proceeding before the Board, the signature of the person appearing on that pleading or document constitutes a certification that that person has read the pleading or document, that to the best of that person's knowledge, information, and belief, there is good cause to support it, and that it is not interposed for delay. A document filed with the Board shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.~~
- C. ~~Documents to be filed by any A person, entity, or organization shall file a document with the Board shall be filed at the its principal office, of the Board between the hours of 8:00 a.m. and 5:00 p.m., any Monday through Friday, with the exception of Arizona state legal holidays. A document shall not be considered is considered filed unless it has actually been on the date it is received by the Board.~~

R4-2-104. Service of Process and Legal Documents

- A. Service of petitions for election or petitions for decertification and subpoenas shall be made ~~in accordance with~~ according to A.R.S. § 23-1391(C).
- B. If an attorney ~~of a party has entered~~ enters an appearance in the proceeding, ~~then~~ service of motions and papers upon the attorney or the attorney's representative shall constitute service upon the party.

R4-2-105. Computation of Time

In computing any period of ~~the time prescribed or allowed~~ by this Chapter, by order of the Board, ~~the Hearing Officer or the Trial Examiner~~, or by any applicable statute, the day of the act or event from which the designated period of time begins to run shall not be included. When the prescribed ~~or allowed~~ period of time is less than 11 days, intermediate Saturdays, Sundays, and Arizona ~~state~~ legal holidays shall not be included in the computation. The last day of the period ~~so computed~~ shall be included, unless it is a Saturday, Sunday, or ~~an~~ Arizona ~~state~~ legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Arizona ~~state~~ legal holiday.

ARTICLE 2. ELECTIONS

R4-2-201. Contents of Petition for Election

- A. A petition for certification election, when filed ~~pursuant to~~ under A.R.S. § 23-1389(C), by an agricultural employee, a group of agricultural employees, an individual, or a labor organization acting in their behalf shall be signed under oath and shall contain the following information:
1. The name of the agricultural employer;
 2. The address of the agricultural employer;
 3. A description of the bargaining unit which the petitioner claims to be appropriate;
 4. The approximate number of employees in the alleged appropriate unit;
 5. A brief statement that the employer declines to recognize the petitioner as a representative within the meaning of A.R.S. § 23-1382(10) or that the petitioner is currently recognized but desires certification under the Act;
 6. The name, affiliation, if any, and address of petitioner;
 7. ~~The names name and addresses address~~ of any other persons ~~or labor organizations~~ person who ~~claim~~ claims to represent ~~any employees an employee~~ in the alleged appropriate bargaining unit;
 8. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating and the date ~~such the~~ strike or picketing commenced;
 9. A statement that the petition for election is supported by 30% percent or more of the agricultural employees in the bargaining unit; and
 10. Any other relevant ~~facts~~ fact.

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- B. A petition for decertification election, when filed pursuant to under A.R.S. § 23-1389(J), by an agricultural employee, a group of agricultural employees, a labor organization, or an individual acting in their behalf shall be signed under oath and contain the following information:
1. The name and address of the petitioner;
 2. A statement that:
 - a. ~~a~~ A representative other than petitioner has been certified, or is currently recognized by the employer; ~~and;~~
 - b. ~~petitioner~~ Petitioner desires to rescind the certification; ~~and~~
 - c. ~~the~~ The unit claimed to be appropriate, a description of ~~such~~ the unit, and the number of employees in the unit;
 3. The name ~~or names~~, the affiliation, if any, and the ~~addresses~~ address of the ~~individuals or labor organizations~~ person whose recognition or certification the petitioner ~~desires~~ seeks to rescind;
 4. A statement whether the agricultural employer has a contract with any labor organization or other representative of its employees and, if so, the expiration date;
 5. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating and the date ~~such~~ the strike or picketing commenced;
 6. A statement that the petition for decertification election is supported by 30% ~~percent~~ percent or more of the agricultural employees in the bargaining unit; ~~and~~
 7. Any other relevant ~~facts~~ fact.
- C. Any petition for election which does not contain all the information required by subsections (A) or (B) shall not be accepted for filing by the Board.
- D. ~~Within~~ The Executive Secretary shall, within 10 days after the filing of a petition for election with the Board, the Execu-
~~tive Secretary shall~~ send a copy of the petition to the respondent named in the petition. ~~If the Board certified a representa-~~
~~tive other than the petitioner has been certified by the Board, a copy of the petition shall also be sent to the certified labor~~
~~organization.~~

R4-2-202. Withdrawal of Petition

~~If a petition for election is filed with the Board, that petition may be withdrawn by stipulation between petitioner and respon-~~
~~dent. Withdrawn petitions may not be refiled for a period of 6 months after withdrawal. The petitioner and respondent may~~
~~stipulate to withdraw a petition for election that was filed with the Board.~~

R4-2-203. Challenge to Petition; Waiver

- A. ~~The filing of~~ The Board is not required to investigate a challenge to a petition for election, ~~pursuant to~~ filed under A.R.S. § 23-1389(F), ~~shall not require a Board investigation of the challenge.~~
- B. If a respondent fails to file a timely challenge to the petition for election under A.R.S. § 23-1389(F), the challenge is deemed waived.

R4-2-204. Investigation of Petition

- A. ~~Upon the filing of a petition for election with the~~ The Board, a Board or its agent shall, within 10 days, notify the an agricultural employer by telephone ~~of the within 10 days of accepting a filing of the a petition for election. Within 7 days of the telephonic notification, the~~ The agricultural employer shall furnish all each employment records record, payroll signature lists list, and any other pertinent data deemed necessary requested by the Board; or any its agent thereof, to investi-
gate the petition within seven days of the telephonic notification. Upon submission of the requested data to the Board, the
The agricultural employer shall certify in writing and under oath that the requested information provided to the Board is true, complete, and accurate.
- B. ~~In order~~ The Board shall review each authorization to determine if there is reasonable cause to believe a question of representation exists ~~pursuant to under~~ A.R.S. § 23-1389 and A.A.C. R4-2-210; ~~the Board shall review all authorizations as part of the Board's investigation.~~
- C. ~~Upon review of the authorization cards and pertinent employment data, the~~ The Board may, in its own discretion, conduct any investigation it deems necessary, following a review of the authorization cards and pertinent employment data, to determine if a question of representation exists including, but not limited to, a field investigation.
- D. ~~All investigations~~ An investigation shall be conducted in such a manner as to preserve that preserves the confidentiality of the identity of the an agricultural employees employee who may or may not have signed an authorization cards. Investiga-
tive reports An investigative report and the identity of persons a person interviewed in conjunction with the investigation shall not be disclosed to any party at any time except as required by law.
- E. ~~Except as provided by law or R4-2-205(B), neither the~~ The Board nor any and its agent thereof shall not disclose to any person or party the number of authorizations filed nor or any other information concerning the investigation, except as required by law.

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R4-2-205. Time for Submission of Authorizations

- A. ~~All authorizations shall be submitted~~ A petitioner shall submit every authorization with ~~petitions~~ the petition for a certification election or decertification election. Except as provided in subsection (B), ~~authorizations~~ an authorization shall not be accepted after the petition for certification election or decertification election has been filed.
- B. If it is ~~the Board or its agent~~ initially ~~determined~~ determines that the showing of interest is insufficient to warrant a pre-election hearing, the Board, ~~or any agent thereof~~, shall notify ~~the~~ petitioner that ~~petitioner shall have until the close of business on the 2nd day thereafter to file~~ additional authorizations ~~may be filed~~ with the Board ~~within the next two business days~~. To be valid, ~~any~~ an additional authorization ~~must have been~~ shall be signed at any time ~~starting with the day~~ after the day the petition was filed. The person signing the authorization ~~must have been~~ shall be an agricultural employee; at the time of signing the authorization is signed and at any time during the eligibility period, ~~and shall conform to the requirements of R4-2-206.~~
- C. ~~Authorizations signed by agricultural employees hired after the date the petition has been filed shall not be valid for purposes of computing the showing of interest.~~

R4-2-206. Form and Content of Authorizations

- A. If ~~an individual authorization cards are~~ card is submitted to the Board as evidence of a showing of interest, ~~each~~ the card shall contain only ~~+ one name, and + one signature, and only~~ the following information which shall be printed unless otherwise specified:
1. The employee's name, name of employer, ~~and~~ social security or employee ~~I.D.~~ identification number;
 2. The signature of the employee and date in the employee's own handwriting; and
 3. A statement that the employee is authorizing the petitioner to represent that employee for ~~purposes~~ the purpose of collective bargaining in the state of Arizona only, and ~~further authorizing the petitioner to file a petition for election pursuant to~~ under A.R.S. § 23-1389.
- B. If ~~a signature~~ ~~petitions are~~ petition is submitted as ~~authorizations~~ authorization to demonstrate a showing of interest, each petition must contain:
1. The signature of the employee, social security or employee ~~I.D.~~ identification number, and date in the employee's own handwriting; and
 2. The name of the employer and a statement that the employee is authorizing the petitioner to represent that employee for ~~purposes~~ the purpose of collective bargaining in the state of Arizona only, and ~~further authorizing the petitioner to file a petition for election pursuant to~~ under A.R.S. § 23-1389.
- C. ~~Any~~ An authorization ~~which that~~ does not contain the mandatory information shall be invalid.

R4-2-207. Validity of Authorizations

- A. ~~Except as provided in R4-2-205(B), a~~ A valid authorization is ~~+ one~~ that is signed at any time during the authorization period by a person who is an agricultural employee at the time of signing the authorization card ~~or is signed as prescribed in R4-2-205(B).~~
- B. An authorization shall not be rendered invalid because the agricultural employee who signed that authorization also signed ~~an authorizations~~ authorization for ~~other another labor organizations organization~~.
- C. ~~An authorization signed by an agricultural employee hired after the date the petition is filed shall not be valid for the purpose of computing the showing of interest.~~

R4-2-208. Confidentiality of Authorizations

~~All authorizations~~ An authorization and the its contents thereof shall remain ~~strictly~~ confidential, and shall ~~not~~ be subject to ~~any subpoena powers under the Act as permitted by law.~~

R4-2-209. Showing of Interest Computation

- A. The Board or its agent shall compute the showing of interest for any pay period within the eligibility period ~~shall be computed~~ by taking the total number of agricultural employees employed in the bargaining unit during that pay period and determining how many of those employees signed a valid authorization ~~cards in accordance with R4-2-205 and R4-2-207 as prescribed in this Article.~~
- B. ~~For purposes of determining~~ To determine whether an individual is an agricultural employee, permanent, within the meaning of A.R.S. ~~§ 23-1381(1)~~ § 23-1382(1), ~~6~~ six months shall mean 132 work days.
- C. ~~Agricultural employees~~ An agricultural employee who ~~were laid off or otherwise~~ is eligible for unemployment benefits for an entire pay period shall not be included as ~~employees~~ an employee in the bargaining unit for that pay period.
- D. ~~No~~ An agricultural employee who was on a leave of absence for an entire pay period shall ~~not~~ be included in the bargaining unit for that pay period unless the following conditions ~~have been~~ are met:
1. The employer produces a document, ~~signed by the employee and notarized, in which stating that the employee has been~~ was placed on leave of absence for a specified period of time, ~~signed by the employee and duly acknowledged by a notary public; and~~

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2. The date of the employee's projected return does not exceed ~~6~~ six months from the date of the filing of the petition for election; and
 3. Substantial evidence does not exist ~~which would establish~~ establishing that the employee is not on a bona fide leave of absence or will not return from the leave of absence as scheduled.
- E. If an agricultural employee has been placed on workers' compensation leave, that employee shall not be included in the bargaining unit unless the following conditions ~~have been~~ are met:
1. The employer produces a document signed by a ~~duly~~ licensed physician ~~which indicates~~ stating the date the employee was placed on workers' compensation leave and the date of the employee's projected return, ~~and~~
 2. The date of the employee's projected return does not exceed ~~6~~ six months from the date of the filing of the petition for election, and
 3. Substantial evidence does not exist ~~which would establish~~ establishing that the employee is not on a bona fide workers' compensation leave or will not return from the workers' compensation leave as scheduled.

R4-2-210. Existence of a Question of Representation

A question of representation exists in the bargaining unit if a showing of interest of at least 30% percent is made in the final pay period of the eligibility period and in either of the other ~~2~~ two preceding pay periods of the eligibility period.

R4-2-211. Notice of Hearing

- A. ~~After a petition for election has been filed and served by the Board upon the employer or labor organization, if it appears to the Board that there is reasonable cause to believe that a question of representation exists, the Board shall prepare and serve upon all employers and labor organizations named in the petition a notice of hearing before a Hearing Officer at a fixed time and place. The Board shall issue a Notice of Hearing as prescribed in Article 4 if a question of representation exists.~~
- B. ~~Any agricultural employer, labor organization, or any~~ Any person may, by written request to the Board, receive notice of the filing of any petition for election and any related notice of hearing.

R4-2-212. Intervention by a Subsequent Labor Organization

- A. A subsequent labor organization may be allowed to intervene only at the initial session of the pre-election hearing on a petition filed by the first labor organization and may be placed on an election ballot only if the ~~Hearing Officer~~ ALJ finds:
1. The subsequent labor organization has filed with the Board a petition for certification election together with a sufficient number of signed authorizations to meet the 30% percent showing of interest required to establish a question of representation ~~in accordance with~~ under R4-2-210, and
 2. The subsequent labor organization filed its petition and authorizations not later than ~~7~~ seven days prior to the scheduled start of the initial session of the pre-election hearing.
- B. In determining the validity of ~~authorizations~~ an authorization filed by a subsequent labor organization, the authorization period used shall be the same as that of the original petitioner.
- C. In determining the showing of interest for a subsequent labor organization, the eligibility period shall be the same as that of the original petitioner.

R4-2-213. Peak Employment During Eligibility Period and Election

- A. A bargaining unit is at peak whenever the number of employees in the unit is not less than 66 $\frac{2}{3}$ % percent of the maximum number of employees who have been or will be employed in the bargaining unit during the current growing season.
- B. In determining the total number of bargaining unit employees who have been or will be employed at any one time during the current growing season, the ~~Hearing Officer~~ ALJ shall consider:
1. The employer's prior peak employment figures,
 2. The types of crops grown,
 3. The past and present acreage for the crop or crops in question,
 4. The number of employees at other farms with the same or similar crops of similar acreage, and
 5. Any other relevant ~~facts~~ fact.
- C. A question of representation exists in a given bargaining unit only if the bargaining unit is at peak during the pertinent pay periods of the eligibility period as required by R4-2-210. The respondent named in the petitions shall have the burden to allege and to prove that the bargaining unit is not at peak during a given pay period in an eligibility period.
- D. An election shall be held when the bargaining unit is at peak. If peak does not occur at any time during the remainder of the current growing season, the election shall be held at peak during the following growing season.

R4-2-214. Election Procedures

- A. ~~Only those persons~~ a person who ~~are~~ is an agricultural ~~employees~~ employee in the appropriate bargaining unit on the date of the election shall be eligible to vote in that election.
- B. Any party may be represented by ~~2~~ two observers of its own selection, subject to the following limitations:
1. Union observers shall not be officials of any labor organization, and
 2. Company observers shall not be supervisors or company officials.

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- C. Any party or the ~~Board agents~~ Board's agent may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of ~~such a challenged persons~~ person shall be impounded.
- ~~D.~~ ~~Upon conclusion of the election, the~~ The Board shall render a tally of the ballots upon the conclusion of the election.
- ~~D.E.~~ If the challenged ballots are sufficient in number to affect the results of the election, the Board shall, as soon as practicable, investigate ~~such the~~ challenges and shall issue a revised tally which shall be served upon all parties.

R4-2-215. Objections to Election

- A. Within 7 ~~seven~~ days after the tally of the ballots ~~has been rendered by the Board~~, any party may file ~~with the Board objections an objection~~ to the conduct of the election or conduct affecting the results of the election, with the Board, which The filing shall specifically set forth all facts and allegations each fact and allegation in support of the objections objection. ~~Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election.~~ The party filing ~~objections an objection~~ shall simultaneously serve ~~copies a copy of the objections objection~~ on all other parties and file a statement of service with the Board. Issues raised in the ~~objections objection~~ to the conduct of the election or conduct affecting the results of the election shall exclude ~~issues which were any issue that was or could have been raised in either the challenge to the petition or the pre-election hearing.~~
- B. ~~If The Board shall take no further action if the objection objections~~ to the conduct of the election or conduct affecting the results of the election ~~are is not timely filed timely, or do does not comply fully with the provisions of subsection (A), the Board shall take no further action.~~ The Board shall send a written notice to all parties that it will take no further action will be taken by the Board.
- C. ~~If no objections are filed within the time set forth in subsection (A), or if the challenged ballots are insufficient in number to affect the results of the election, and if no run-off election is to be held, the Board shall forthwith issue to the parties a certification of the results of the election, including certification or decertification of the representative, where appropriate, and the proceedings shall be final. The Board shall immediately issue a certification of the results of the election, including certification or decertification of the representative, as appropriate, if:~~
1. Objections are not filed within the time prescribed in subsection (A), or
 2. The number of challenged ballots are insufficient to affect the election results, and
 3. A run-off election is not required.
- ~~D.~~ The Board's decision may be appealed as prescribed in Title 41, Chapter 6, Article 10.

R4-2-216. Investigation of Objections to Election

- A. ~~If The Board shall investigate objections to the conduct of the election or conduct affecting the results of the election if the objections are timely filed timely, the Board shall investigate the objections.~~ The Board may, ~~if appropriate, dismiss the objections and certify the results of the election on the basis of an administrative investigation.~~
- B. An aggrieved party may appeal ~~to the full Board the Board's dismissal of the objections as prescribed in Article 4, no later than 5 within five days after receipt by that party of the dismissal of the objections. For good cause shown, the The Board may extend the time for filing an appeal for good cause, of the dismissal of the objections.~~
- C. ~~If it appears to the Board determines that substantial and material factual issues exist which can be resolved only after a hearing, the Board shall issue and cause to be served on the parties a notice of hearing Notice of Hearing on those issues before a Hearing Officer. At the hearing, any party may present evidence in support of, or in opposition to, the objections. The party or parties making the objections shall have the burden of proving all facts and allegations set forth in its objections. The Hearing Officer shall issue a recommended decision and proposed form of order that disposes of the issues and directs appropriate action including, without limitation, ordering that a new election be held or that the Board certify the results of the election.~~
- D. Any hearing pursuant to this Section and any objection to the ~~Hearing Officer's ALJ's~~ decision shall be initiated and conducted in accordance with the provisions of R4-2-406 and as prescribed in Article 4.

R4-2-217. Run-off Elections

- A. If an election ballot provides for the choice among at least 2 two labor organizations and "no union", and none of the choices on the ballot receive a majority of valid votes cast, the Board shall, as soon as practicable, conduct a run-off election.
- B. In any run-off election, only ~~those persons a person who are is an~~ agricultural employees employee in the appropriate bargaining unit on the date of the run-off election shall be eligible to vote in that run-off election.
- C. The ballot in the run-off election shall provide for a selection between the labor organization receiving the highest number of votes and "no union".
- D. ~~Upon conclusion of a A run-off election, shall be administered as prescribed in R4-2-214 through R4-2-216 and Article 4, relating to election procedures and review of decisions and orders, shall govern, insofar as applicable.~~

R4-2-218. Consent-election Agreements

An agricultural employer may enter into a consent-election agreement with ~~4 one~~ one or more individuals or labor organizations ~~which have presented to that agricultural employer that present~~ a claim to be recognized as the representative of a designated

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bargaining unit. The agreement shall contain a description of the appropriate bargaining unit, a proposed time and place for holding the election, and a statement specifying which agricultural employees within the appropriate bargaining unit shall be eligible to vote. A consent election will be conducted if the Board finds the consent-election agreement fair and noncollusive; ~~and the time, place, and conditions of the election are approved by the Board.~~ The method of conducting a consent elections election shall be consistent with the methods followed by the Board in conducting elections.

R4-2-219. Duties and Powers of Hearing Officer Repealed

- A.** ~~The Hearing Officer shall determine and issue a recommended decision and proposed form of order stating whether a question of representation exists and direct an election when appropriate and determine the bargaining unit and such issues as are raised at the hearing. In conducting election hearings, the Hearing Officer shall have all duties and powers as provided in A.R.S. § 41-1062 and Article 4 of this Chapter.~~
- B.** ~~Following the conclusion of the election hearing, the Hearing Officer shall, within 30 days, unless good cause is shown, prepare and file with the Board a written recommended decision setting forth findings of fact, conclusions of law, and an order. The Board shall, within 10 days, serve a copy of the Hearing Officer's written recommended decision on all parties. The time for a party to object to the Hearing Officer's recommended decision shall commence upon receipt of the written recommended decision.~~

ARTICLE 3. UNFAIR LABOR PRACTICES

R4-2-301. Unfair Labor Practice Charges

A charge that ~~any~~ a person has engaged in or is engaging in an unfair labor practice may be made by any person. ~~Any~~ A charge may be withdrawn by the charging party prior to hearing and thereafter with the consent of the ~~Trial Examiner~~ ALJ. Upon withdrawal of any charge, the complaint may be dismissed at the discretion of the General Counsel.

R4-2-302. Form and Contents of Charge

- A.** ~~All charges~~ A charge shall contain the following information:
1. The full name, address, and telephone number of the person, agricultural employer, or labor organization making the charge;
 2. If the charge is filed by a labor organization, the full name and address of any national or international labor organization of which it is an affiliate or constituent unit;
 3. The full name and address of the person, agricultural employer, or labor organization against whom the charge is made ~~(thereinafter referred to as the respondent); and~~
 4. A clear and concise statement of the facts constituting the alleged unfair labor practice.
- B.** ~~Any charge which does not contain~~ The Board shall only accept for filing a charge that contains all the information required in subsection (A) ~~shall not be accepted for filing by the Board.~~
- C.** ~~All charges~~ A charge shall be in writing, signed, and shall contain a declaration by the person signing it, under penalty of perjury, that its contents are true and correct to the best of that person's knowledge, information, and belief.

R4-2-303. Investigation of Charge

- A.** ~~Upon the filing of a charge, the~~ The Board shall serve a copy of the a filed charge upon the person, agricultural employer, or labor organization against whom the charge has been made.
- B.** The General Counsel or designee shall conduct a preliminary investigation of the charge ~~pursuant to~~ under A.R.S. § 23-1390(K). After the preliminary investigation, and at the discretion of the General Counsel, the General Counsel may ~~either:~~
1. Refuse to issue a complaint; ~~or~~
 2. File a complaint against any person, agricultural employer, or labor organization named in the charge ~~which that~~ the General Counsel feels may have committed an unfair labor practice; ~~and~~
 3. Seek appropriate injunctive relief, as provided for in A.R.S. § 23-1390.
- C.** ~~No~~ An ~~investigative reports, notes, memoranda report, note, memo, oral or written statements statement, tape recordings recording, and any other information; or work product prepared or obtained by the General Counsel or designee during any an investigation shall not be subject to any subpoena powers of the Act or disclosed to any person without the consent of the General Counsel, unless otherwise provided by law.~~

R4-2-304. Complaint

- A.** ~~After a charge has been filed, if it appears to~~ If the General Counsel decides after investigating a charge that a formal proceedings proceeding should be instituted, the General Counsel shall issue and serve on all other parties each party a formal complaint in the name of the Board stating the unfair labor practice or practices. The complaint shall contain a clear and concise statement of the facts upon which the assertion of the Board's jurisdiction is predicated based, and a clear and concise description of the acts which are act that is claimed to constitute an unfair labor practices practice. A notice of hearing issued under Article 4 shall accompany the complaint.

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- B. Any complaint may be amended by the General Counsel before a hearing date has been set by the Board. Copies of the amended complaint shall be served upon all parties. After the hearing date has been set, the complaint cannot be amended except upon proper motion by the General Counsel and with the consent of the Trial Examiner ALJ.
- C. Any A complaint may be withdrawn before the hearing by the General Counsel. After the opening of the hearing, the complaint may be withdrawn upon proper motion by the General Counsel with consent of the Trial Examiner ALJ.

R4-2-305. Refusal to Issue Complaint

- A. If, after the charge has been filed, the General Counsel declines to issue a complaint or, having withdrawn a complaint, refuses to reissue it, the General Counsel shall advise the parties each party in writing, accompanied by a simple statement of the procedural or other grounds for the action. The charging party may file with the General Counsel a request to reconsider the refusal to issue or reissue the complaint. A request to reconsider shall be filed with the General Counsel within 10 days of receipt of notice of the refusal to issue or reissue the complaint, and copies shall be served simultaneously on all other parties, and shall copy every other party simultaneously. Any response to the request shall be filed by the General Counsel shall file any response to the request within 7 seven days of receipt of the request for reconsideration receiving it. Thereafter, the General Counsel shall advise all parties of the decision, in writing and within 7 seven days of a the decision.
- B. If, after the General Counsel has refused to issue or reissue a complaint, the charging party discovers new evidence which has become available only after the refusal to issue or reissue a complaint, the The charging party may file with the General Counsel a request to reconsider with the General Counsel if, after the General Counsel has refused to issue or reissue a complaint, based upon newly discovered material evidence is found which could not with reasonable diligence have been discovered at the time the original complaint was filed. The request for reconsideration based upon newly discovered evidence shall be filed immediately upon the discovery of the evidence and will not be entertained except where the requesting party can establish that new evidence could not have been discovered by diligent inquiry prior to the General Counsel's refusal to issue or reissue a complaint.
- C. Nothing contained within this rule shall be construed to prohibit or limit the discretion of the The right of the General Counsel, with regard to issuing or reissuing to issue or reissue a complaint following a notice of refusal to issue a complaint or withdrawal of a complaint is not prohibited or limited by anything in this rule.
- D. If a complaint is withdrawn or dismissed on the General Counsel's own motion, no complaint shall be reissued more than 6 six months after the date of the withdrawal or dismissal of the original complaint.

R4-2-306. Answer Repealed

- A. The respondent, within 10 days of receipt of the complaint, shall file an answer. The respondent shall admit or deny each of the facts alleged in the complaint. If respondent is without knowledge sufficient to permit a substantive answer, the respondent shall so state, and this statement operates as a denial. Unless for good cause shown, any allegation in the complaint not denied in the answer shall be deemed to be admitted by the Trial Examiner or the Board.
- B. Upon good cause shown by any party, the Board may, by written order, extend the time within which the answer shall be filed.
- C. If a respondent fails to file a timely answer, all allegations in the complaint shall be deemed to be admitted by respondent unless good cause is shown. The Board shall send notice of the untimely filing to all parties.
- D. The respondent may amend the answer before a hearing date has been set by the Board. The respondent shall file copies of the amended answer with the Executive Secretary and shall simultaneously serve a copy of the amended answer on all parties. After the hearing date has been set, the answer cannot be amended except upon proper motion by the respondent with the consent of the Trial Examiner.

R4-2-307. Filing of Answer; Service Repealed

- A. Respondent shall file the original and 1 copy of the answer with the Board and shall simultaneously serve copies on all parties. The answer need not be verified or accompanied by affidavit. The answer of a party represented by counsel shall be signed by the attorney of record. A party who is not represented by an attorney shall sign the answer and state a complete mailing address.
- B. The signature of the respondent or responding attorney constitutes a certification that the respondent has read the answer; that to the best of that person's knowledge, information, and belief there are adequate grounds to support it; and that it is not interposed for delay. If an answer is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the answer had not been served.

R4-2-308. Notice of Hearings; Continuance Repealed

- A. The Board shall, at least 20 days prior to the date of the hearing, serve a Notice of Hearing upon all parties setting forth the date, time, and place of the hearing and the name of the Trial Examiner who will be conducting the hearing.
- B. Upon motion by any party and for good cause shown or upon the Hearing Officer's or Trial Examiner's own motion, a hearing may be continued.

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R4-2-309. Consolidation and Severance of Proceedings Repealed

In order to avoid any unnecessary costs or delay, any party may, after a charge has been filed, move that the charge and any other related proceeding be either consolidated with or severed from any other proceeding pending before the Board. Motions to consolidate or sever proceedings after the issuance of a complaint shall be filed with the Executive Secretary.

R4-2-310. Discovery and Disclosure Repealed

- A.** No later than 10 days prior to the commencement of a hearing on a complaint alleging an unfair labor practice, the parties shall file with the Board and serve copies on the Trial Examiner and all other parties the following:
 - 1. A list of all witnesses to be called by each individual party at the hearing;
 - 2. A list of all exhibits to be offered into evidence by each party at the hearing;
 - 3. Copies of all written or tape-recorded prehearing statements made by any person intended to be called to testify as a witness at the hearing.
- B.** The time for filing the lists of witnesses, exhibits, or statements may be extended for good cause shown.
- C.** Witnesses or exhibits not listed may not be called or used at the hearing except for impeachment purposes.
- D.** No later than 5 days prior to the commencement of the hearing on a complaint alleging an unfair labor practice, all parties shall endeavor in good faith to stipulate so far as possible to all material facts.

R4-2-311. Duties and Powers of Trial Examiner Repealed

- A.** The Trial Examiner shall inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice as set forth in the complaint or amended complaint. In conducting the inquiry, the Trial Examiner shall have all duties and powers as provided in A.R.S. § 41-1062 and Article 4 of this Chapter.
- B.** Following the conclusion of the hearing, the Trial Examiner shall, within 30 days unless good cause is shown, prepare and file with the Board a proposed decision stating findings of fact and conclusions of law on all material issues and a recommended order. The Executive Secretary shall immediately serve the proposed decision and recommended order on the parties.

ARTICLE 4. HEARINGS

R4-2-401. Hearings

- A.** Any hearing for the purpose of taking evidence shall be conducted by a Trial Examiner or Hearing Officer. If necessary, the Board shall designate an alternate Trial Examiner or Hearing Officer to take the place of a Trial Examiner or Hearing Officer previously designated to conduct the hearing.
- B.** Hearings shall be open to the public. All hearings under this Chapter shall be conducted in accordance with A.R.S. § 41-1062 and this Article.

The Board shall use the uniform administrative appeals procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern the initiation and conduct of formal adjudicative proceedings before the Board.

R4-2-402. Conduct of Hearings Repealed

- A.** Any proceeding before a Trial Examiner or Hearing Officer shall be held in accordance with A.R.S. § 41-1062(A) except the rules of evidence applicable in the Superior Courts of the state of Arizona shall apply to the proceeding.
- B.** Any party shall have the right to appear at any hearing in person or by counsel. Any party, the Hearing Officer, or Trial Examiner shall have the power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence in order to obtain a full and complete record. Witnesses shall be examined orally under oath or affirmation. Stipulations of fact may be introduced in evidence with respect to any issue.
- C.** The right to object to rulings on motions shall not be waived by the filing of an answer or by other participation in any proceedings before the Trial Examiner, the Hearing Officer, or the Board.
- D.** In all hearings before a Trial Examiner or Hearing Officer, parties shall timely present all relevant evidence which, with due diligence, could have been obtained prior to the hearing or such evidence shall be waived and shall not be raised at a later time or in a subsequent hearing.
- E.** Parties or their counsel shall appear at the time and place designated in the notice of hearing and shall be prepared to proceed with the hearing at the time. Necessary witnesses shall be available in order to avoid delaying the hearing. The parties shall provide a sufficient number of copies of all exhibits intended to be introduced as evidence so as to provide 1 copy to each of the other parties, to the Trial Examiner or Hearing Officer, and 1 copy for the record. The Hearing Officer or Trial Examiner may impose appropriate sanctions for any violations of this subsection.
- F.** Any objection to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, may be accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.
- G.** Misconduct at any hearing before the Trial Examiner, the Hearing Officer, or the Board is grounds for summary exclusion from the hearing.
- H.** Upon request, before the close of the hearing, any party shall be entitled to a reasonable period of time for oral argument.

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R4-2-403. Intervention Repealed

Persons desiring to intervene in Board proceedings shall file a written motion stating appropriate grounds for the intervention. The Board, the Hearing Officer, or Trial Examiner, with appropriate discretion, may permit intervention to such extent and upon a showing of good cause. The intervenor shall then be considered a party to the proceedings for all purposes.

R4-2-404. Subpoenas and Depositions Repealed

- A.** Any party to a hearing or the General Counsel may file a written application for subpoenas or subpoenas duces tecum with the Board. The application for subpoena shall be accompanied by the original and 1 copy of the actual form of subpoena. The subpoena shall specify the name and address of the person to be subpoenaed and, where applicable, shall state with reasonable specificity the documents or physical objects sought by the subpoena. Applications for subpoenas may be made ex parte. The Executive Secretary, the Trial Examiner, or the Hearing Officer appointed to conduct the hearing, as appropriate, shall issue the subpoenas requested. All subpoenas issued shall be returnable only at the hearing.
- B.** Any person served with a subpoena, whether ad testificandum or duces tecum, and who does not intend to comply with the subpoena, shall, within 5 days of the date of the service of the subpoena, file a motion in writing to quash the subpoena. The motion shall be filed with the Board and served simultaneously upon the parties and the Trial Examiner or Hearing Officer.
- C.** The Trial Examiner or the Hearing Officer shall quash the subpoena if, in that Trial Examiner's or Hearing Officer's discretion, the evidence sought does not relate to any matter in question in the hearing or if the subpoena does not describe with sufficient particularity the evidence sought to be produced or if for any other reason sufficient in law the subpoena is invalid. The Trial Examiner or Hearing Officer shall state the grounds for the ruling. The motion to quash and any ruling thereon shall become part of the record.
- D.** Witness fees and mileage shall be paid by the party at whose request the witness appears.

R4-2-405. Motions Repealed

- A.** Except as provided in subsection (F), all motions shall be in writing unless made at the hearing, in which case they shall be stated orally on the record. The movant shall briefly state the grounds for the motion and order or relief sought.
- B.** If a party files a motion before a case is transferred to the Board, the movant shall file the original motion with the Board and serve copies simultaneously on the Trial Examiner or Hearing Officer and all parties. When motions are made prior to the transfer of the case to the Board, the Hearing Officer, or Trial Examiner shall rule, either orally on the record or in writing, upon all motions filed or made at the hearing.
- C.** After the transfer of the case to the Board, the movant shall file an original and 9 nine copies of the motion with the Board and serve copies simultaneously on all parties. A written notice of the disposition of the motion shall be served upon the parties by the Executive Secretary.
- D.** All motions, rulings, and orders shall become part of the record. Unless expressly authorized by ruling of the Board, the recommended decision of the Hearing Officer or Trial Examiner shall not be appealed to any court but shall be considered or reconsidered by the Board on appropriate appeal and rehearing.
- E.** All written motions made prior to the hearing shall be filed with the Board. All motions to dismiss, motions for summary judgment, or motions for judgment on the pleadings prior to the hearing shall be ruled on by the Board. All other motions made prior to the hearing shall be ruled on by the Hearing Officer or Trial Examiner. Unless otherwise provided, motions and responses shall be filed promptly and within such time as not to delay the proceedings.
- F.** Any party desiring to make an oral motion to the Hearing Officer or Trial Examiner at any time other than during a hearing shall do so by telephonic conference call in which all other parties shall have the opportunity to participate and which shall be recorded by a court reporter. In the case of written motions, the Hearing Officer or Trial Examiner may order that oral argument on the motion be heard by telephonic conference call in which all parties shall have the opportunity to participate and which shall be recorded by a court reporter.

R4-2-406. Board Review of Decisions and Orders Repealed

- A.** Objections to a Hearing Officer's or Trial Examiner's proposed decision and recommended order shall be filed within 20 days of receipt or within such additional time as the Board may grant. An original and 9 copies shall be filed with the Board and copies shall be served simultaneously upon all other parties, pursuant to A.R.S. § 23-1391.
- B.** If no objections to the Hearing Officer's or Trial Examiner's proposed decision and recommended order are timely filed, or if the Board on its own motion declines review of the proposed decision and recommended order, the proposed decision will automatically become the final decision and order of the Board and all objections not previously made shall be deemed waived for all purposes.
- C.** Any party may, within 20 days of receipt of objections, file an original and 9 copies of a response and simultaneously serve copies to all other parties. A reply may be filed within 10 days of receipt of the response.
- D.** If any person files timely objections to the Hearing Officer's or Trial Examiner's proposed decision, the Board shall review the entire record including the Hearing Officer's or Trial Examiner's proposed decision, the objections thereto, the complete transcript of evidence, and the exhibits, briefs, and arguments. With convenient speed, the Board may conduct a hearing at which the parties may present oral argument.

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- ~~E. Any objection or response to an objection must contain all contested issues and supporting documentation which would enable the Board to rule on the basis of its contents. The objection or response to an objection shall not raise any issue or allege any facts which could have been but were not timely presented to the Hearing Officer or Trial Examiner. The Board shall issue and serve upon the parties its order within 10 days after its decision has been made.~~

R4-2-407. Rehearing or Review of Decision: Basis

- ~~A. Any party aggrieved by a decision rendered by the Board may file with the Board, not later than 15 days after receipt of the Board's decision, a written motion for rehearing. Any motion not timely filed shall be waived and shall not be considered by the Board.~~
- ~~B. A motion for rehearing may be amended at any time before it is ruled upon by the Board. A response may be filed within 10 days after receipt of the motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.~~
- ~~C. A rehearing of the Board's decision may be granted for any of the following causes materially affecting the moving party's rights:~~
- ~~1. Irregularity in the proceedings before the Board or any order or abuse of discretion whereby the moving party was deprived of a fair hearing;~~
 - ~~2. Misconduct of the Board, its employees, or any party;~~
 - ~~3. Accident or surprise which could not have been prevented by reasonable diligence;~~
 - ~~4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;~~
 - ~~5. Excessive or insufficient penalties;~~
 - ~~6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing before the Board;~~
 - ~~7. That the decision is not justified by the evidence or is contrary to law.~~
- ~~D. The Board may affirm or modify its prior decision or grant a rehearing as to all or any of the parties and on all or parts of the issues for any of the reasons set forth in subsection (C). The Board's order shall specify the grounds upon which the rehearing is granted and the rehearing shall cover only those matters.~~
- ~~E. Within the time for filing a motion for rehearing, the Board may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. If the motion for rehearing has been timely filed, the Board may grant the motion for any reason not stated in the motion. In either case, the order granting a rehearing shall specify the grounds therefor.~~
- ~~F. When a motion for rehearing is based upon affidavits, the affidavits shall be served with the motion. An opposing party may, within 10 days of receipt of the motion and affidavits, serve opposing affidavits. This response period may be extended for an additional period not exceeding 20 days, either by the Board for good cause shown or by written stipulation of the parties. The Board may permit reply affidavits.~~
- A. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- B. The Board shall grant a rehearing or review of a final administrative decision for any of the following causes materially affecting the moving party's rights:
1. The decision is not justified by the evidence or is contrary to law.
 2. There is newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original proceeding.
 3. One or more of the following has deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the Board, the ALJ, or the prevailing party; or
 - c. Accident or surprise which could not have been prevented by ordinary prudence.
 4. Excessive or insufficient sanction.
- C. The Board may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (B). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

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TITLE 8. EMERGENCY AND MILITARY AFFAIRS

CHAPTER 2. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

DIVISION OF EMERGENCY MANAGEMENT

PREAMBLE

1. Sections Affected

Article 6
R8-2-601
R8-2-602
R8-2-603
R8-2-604
R8-2-605
R8-2-606
R8-2-607
R8-2-608
R8-2-609
R8-2-610
R8-2-611
R8-2-612

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 26-306(A)(3)

Implementing statutes: A.R.S. §§ 26-305.02 and 26-306(A)(12)

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 8 A.A.R. 493, February 1, 2002

Notice of Formal Rulemaking Advisory Committee: 8 A.A.R. 500, February 1, 2002

4. The name and address of agency personnel with whom individuals may communicate regarding the rule:

Name: Linda D. Mason, Education and Training Director

Address: Arizona Department of Emergency and Military Affairs
Division of Emergency Management
5636 E. McDowell, Bldg. 101
Phoenix, AZ 85008

Telephone: (602) 231-6218

Fax: (602) 231-6206

E-mail: masonl@dem.state.az.us

or

Name: David Ervine

Address: Arizona Department of Emergency and Military Affairs
Division of Emergency Management
5636 E. McDowell, Bldg. 101
Phoenix, AZ 85008

Telephone: (602) 231-6334

Fax: (602) 231-6231

E-mail: ervined@dem.state.az.us

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5. An explanation of the rule, including the agency's reasons for initiating the rule:

The current rules establish the Department's Operational procedures for the hazardous materials training program and student instructor certification. The Department no longer certifies students and instructors. The proposed rulemaking amends R8-2-601, R8-2-602, R8-2-603, R8-2-604, and R8-2-605, adopted effective March 29, 1988, to reflect this change of procedure and to make terminology revisions. It repeals R8-2-606, R8-2-607, R8-2-608, R8-2-609, R8-2-610, R8-2-611, and R8-2-612 to eliminate duplication of text and because the Department no longer has pilot program certification and does not recertify first responders. The proposed changes will bring the rules into accord with the operational practices of the Department.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, and analysis of the study and other supporting material:

The Department does not propose to rely on any study.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of the state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

This proposed rulemaking eliminates certification and addresses terminology and procedural changes to align the rules with Department Operational Practices. It is expected that the changes will have minimal economic, small business, or consumer impact.

9. The name and address of agency personnel with whom individuals may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Not applicable

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or if no proceeding is scheduled, where, when, and how individuals may request an oral proceeding on the proposed rule:

No oral proceeding is scheduled. Written comments on the proposed rulemaking may be submitted to an individual listed in item #4 until 5:00 p.m. within 30 days after the publication date of this notice. The record on this rulemaking will close at that time.

The Department will schedule an oral proceeding on the proposed rulemaking if it receives a written request for one within 30 days after the publication of this notice under the provisions of A.R.S. § 41-1023(C).

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

29 CFR 1910.120(Q)(6) and (Q)(i)(ii), revised July 1, 2001. This material is incorporated in R8-2-605(B). The employer is responsible to the Occupational Safety and Health Administration to maintain records of an employee's continued training and to ensure that the employee maintains competency.

13. The full text of the rules follows:

TITLE 8. EMERGENCY AND MILITARY AFFAIRS

CHAPTER 2. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

DIVISION OF EMERGENCY MANAGEMENT

**ARTICLE 6. HAZARDOUS MATERIALS TRAINING PROGRAM, STUDENT AND INSTRUCTOR
~~CERTIFICATION~~ EVIDENCE OF COMPLETION**

Section

R8-2-601. Definitions

R8-2-602. ~~First on the scene program and instructor certification~~ Hazmat First Responder Awareness Level Course, Hazmat First Responder Operations Level Course and Instructor Authorization

R8-2-603. ~~First on the scene instructor certification renewal and recertification~~ Renewal of Hazmat First Responder Awareness and Hazmat First Responder Operations Instructor Authorization

R8-2-604. ~~First on the scene administrative requirements~~ Hazmat First Responder Awareness Level Course, Hazmat First Responder Operations Level Course and Division Requirements

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- R8-2-605. ~~First-on-the-scene student certification~~ Hazmat First Responder Awareness Level Personnel, Hazmat First Responder Operations Level Operatives and Evidence of Completion
- R8-2-606. ~~First-on-the-scene pilot program certification~~ Repealed
- R8-2-607. ~~First-responder program and instructor certification~~ Repealed
- R8-2-608. ~~First-responder instructor certification renewal and recertification~~ Repealed
- R8-2-609. ~~First-responder administrative requirements~~ Repealed
- R8-2-610. ~~First-responder student certification~~ Repealed
- R8-2-611. ~~First-responder pilot program certification~~ Repealed
- R8-2-612. ~~First-responder recertification~~ Repealed

**ARTICLE 6. HAZARDOUS MATERIALS TRAINING PROGRAM, STUDENT AND INSTRUCTOR
~~CERTIFICATION~~ EVIDENCE OF COMPLETION**

R8-2-601. Definitions

The following definitions ~~shall~~ apply in this Article 6, unless the context ~~otherwise~~ requires otherwise:

1. ~~“Certification” means the act of verifying that an individual has successfully completed a standardized course of instruction.~~
2. ~~“Certified instructors” means individuals who have been certified pursuant to R8-2-602 or R8-2-607, or both.~~
3. ~~“Certify” means to verify that an individual has successfully completed a standardized course of instruction.~~
4. ~~“Director” means the Director of the Division of Emergency Services.~~
5. ~~“Division” means the Arizona Division of Emergency Services.~~
6. ~~“Hazardous materials response experience” means active participation as a person responsible for response to and mitigation of hazardous materials incidents.~~
7. ~~“Hazardous materials first-on-the-scene personnel” means persons who might be first at the scene of a hazardous materials incident.~~
8. ~~“Hazardous materials first-responder personnel” means persons responsible for response to and mitigation of hazardous materials incidents.~~
1. “Authorized instructor” means an individual who the Division determines meets the criteria at R8-2-602.
2. “Director” means Director of the Arizona Division of Emergency Management.
3. “Division” means the Arizona Division of Emergency Management.
4. “Evidence of Completion” means a document issued by the Division to an individual who successfully completes a standardized course of instruction.
5. “Hazmat First Responder Awareness Level personnel” means individuals who are likely to witness or discover a hazardous material release and who are trained to initiate an emergency response sequence by notifying the proper authorities of the release.
6. “Hazmat First Responder Operations Level operatives” means individuals trained to respond in a defensive fashion to, but do not actually try to stop, a hazardous material release.
7. “Hazardous materials response experience” means knowledge and skills gained by responding to hazardous materials incidents.
8. “Instructor requirements” means the criteria listed at R8-2-602 for authorization as an instructor by the Division.

R8-2-602. ~~First-on-the-scene program and instructor certification~~ Hazmat First Responder Awareness Level Course, Hazmat First Responder Operations Level Course and Instructor Authorization

A. Standardized curriculum:

1. ~~All certified hazardous materials first-on-the-scene training programs shall be conducted in accordance with the standardized curriculum as maintained and on file with the Division. The Division shall promptly notify all certified instructors of any changes in the curriculum. An authorized instructor shall conduct a Hazmat First Responder Awareness Level course or a Hazmat First Responder Operations Level course in accordance with the standardized curriculum maintained by the Division. The Division shall promptly notify all authorized instructors of any change in the curriculum.~~
2. ~~Hazardous materials first-on-the-scene training program shall consist of the hazardous materials first-on-the-scene course.~~
- 3-2. ~~Topics covered in the hazardous materials first-on-the-scene course are:~~ Topics covered in the Hazmat First Responder Awareness Level course are:
 - a. Recognition and identification of hazards;
 - b. Basic reference materials;
 - c. Characteristics of hazardous materials;
 - d. Personal protection and safety; and
 - e. Planning considerations.
- a. Understanding what hazardous materials are and the risks associated with a hazardous materials incident;

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- b. Understanding the potential outcomes associated with an emergency created when hazardous materials are present;
 - c. The ability to recognize the presence of hazardous materials in an emergency;
 - d. The ability to identify different hazardous material; and
 - e. Understand the role of a first responder awareness individual in an employer's emergency response plan, including site security and control, and use of current resource materials.
 - 3. Topics covered in the Hazmat First Responder Operations Level course are:
 - a. Knowledge of basic hazard and risk assessment techniques;
 - b. Knowledge of how to select and use proper protective equipment;
 - c. Understanding of basic hazardous materials terms;
 - d. Knowledge of how to perform basic control, containment or confinement Operations with the resources and personal protective equipment available;
 - e. Knowledge of how to implement basic decontamination procedures; and
 - f. Understanding of standard operating and termination procedures.
- B. Instructors and instructor certification** Instructor authorization:
- 1. Each hazardous materials first on the scene course shall have an instructor certified by the Division. Each Hazmat First Responder Awareness Level and Hazmat First Responder Operations Level course shall be taught by an instructor authorized by the Division.
 - 2. The Division shall certify instructors for the hazardous materials first on the scene course who have submitted the following. To be authorized as an instructor, an individual shall submit the following to the Division:
 - a. Evidence of successful completion of the Division's first on the scene instructor's workshop by attaining a final score of 90% on the written exam and by demonstrating appropriate educational methodology and instructional techniques during an oral presentation.
 - b. Evidence of two years' experience in hazardous materials response and verification of a minimum of 80 hours of hazardous materials training approved by the Director.
 - c. A letter of recommendation from the applicant's employer.
 - d. A resume describing the applicant's experience in hazardous materials response and the applicant's experience as a trainer.
 - a. A "Participant Application" form obtained from the Division, located at the Department of Emergency and Military Affairs, 5636 E. McDowell, Bldg. 101, Phoenix, AZ 85008, for an instructor workshop. The applicant shall complete the following information:
 - i. Course number;
 - ii. Course date;
 - iii. Course title;
 - iv. Applicant's name;
 - v. SSN;
 - vi. Employer;
 - vii. Position or title;
 - viii. Phone number;
 - ix. Fax number, if any;
 - x. Work address, city, state, zip code, and county;
 - xi. Electronic mail address;
 - xii. Briefly describe current duties and how training as an instructor will be used;
 - xiii. Applicant's signature and date; and
 - xiv. Supervisor's signature, if applicable, and date.
 - b. Evidence of two years' experience in hazardous materials incident response and Evidence of Completion of at least 80 hours for Awareness Level or at least 240 hours for Operations Level of hazardous materials training, and a signed copy of attendance and performance records.
 - c. A letter of recommendation to take instructor training from the applicant's employer, local emergency planning committee chair, county emergency management director, or coordinator.
 - d. A brief summary of the applicant's experience in hazardous materials response and as an instructor of adult-level courses.
 - 3. Certification shall be valid for two years. Once an applicant has submitted to the Division documentation as described in subsection (B), that individual shall:
 - a. Attend the instructor workshop.
 - b. Attain a score of 90% or above on the written exam.
 - c. Successfully complete a teach back: to demonstrate appropriate educational methodology and instructional techniques during an oral presentation.

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4. The Division shall issue Evidence of Completion to individuals who successfully complete the instructor workshop and shall maintain records of instructor authorization.
5. Instructor authorization is valid for two calendar years.

R8-2-603. ~~First-on-the-scene instructor certification renewal and recertification~~ Renewal of Hazmat First Responder Awareness and Hazmat First Responder Operations Instructor Authorization

- A. Certified instructors may renew their certification by attending an instructor refresher workshop sponsored by the Division within six months of the expiration date of their current certification and by teaching the hazardous materials first-on-the-scene course or a refresher course two times in a two-year certification period. To renew instructor authorization obtained from the Division, an authorized instructor shall:
1. Submit a "Participant Application" form as described in R8-2-602(B) to take an instructor refresher workshop.
 2. Attend an instructor refresher workshop sponsored by the Division prior to expiration of the current instructor authorization, and
 3. Provide evidence of having taught either a Hazmat First Responder Awareness Level course or refresher, or a Hazmat First Responder Operations Level course or refresher, two times in the current authorization period.
- B. Instructors who fail to maintain their current certification shall make application to the Division for recertification. Such instructors will be recertified if they successfully complete the first-on-the-scene instructor workshop by attaining a final score of 90% and by demonstrating appropriate educational methodology and instructional techniques during an oral presentation. An instructor who fails to comply with subsection (A), may obtain instructor authorization by applying and meeting the requirements as a new instructor under R8-2-602.

R8-2-604. ~~First-on-the-scene administrative requirements~~ Hazmat First Responder Awareness Level Course, Hazmat First Responder Operations Level Course and Division Requirements

- A. Certified instructors shall notify the Division 30 days prior to the delivery of the hazardous materials first-on-the-scene course. The Hazmat First Responder Awareness Level course and the Hazmat First Responder Operations Level course shall be taught by an instructor authorized by the Division. An instructor shall notify the Division at least 30 days before course delivery by submitting a "Course Request Form" obtained from the Division, located at the Department of Emergency and Military Affairs, 5636 E. McDowell, Bldg. 101, Phoenix, AZ 85008. The instructor shall complete the following information:
1. Name of requestor;
 2. Date;
 3. Agency;
 4. Mailing address, city, state, zip code and county;
 5. Phone number;
 6. Fax number, if any;
 7. Name of agency head;
 8. Applicant signature;
 9. Electronic mail address;
 10. Type of course;
 11. Course name;
 12. Course number;
 13. Date course is offered;
 14. Training site address and county;
 15. Intended audience;
 16. Estimated number of participants;
 17. Name and signature of requestor; and
 18. County emergency management director or local emergency planning committee chairperson endorsement: name, signature, title, and date.
- B. Certified instructors shall provide the Division with the date, time, location and estimated number of students, 30 days prior to course delivery.
- ~~C.~~ B. Following the delivery of the hazardous materials first-on-the-scene course, certified instructors shall provide the Division with student attendance and performance records and a course completion report. Within two weeks following completion of either the Hazmat First Responder Awareness Level course or refresher, or the Hazmat First Responder Operations Level course or refresher, the instructor shall provide the Division with all course records, including student application forms, course roster, completed pre- and post-exam answer sheets, and instructor and course evaluations. In addition, the instructor shall return all unused course materials to the Division.
1. The course completion report requires the name of the instructor, date and location of the training, number of students registered, and number of students successfully completing the course.
 2. Course completion report forms are available from the Division.

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D. Records of instructor certification and student certification will be maintained at the Division.

R8-2-605. ~~First on the scene student certification~~ Hazmat First Responder Awareness Level Personnel, Hazmat First Responder Operations Level Operatives and Evidence of Completion

A. ~~Persons shall be certified as hazardous materials first on the scene personnel who:~~ To receive Evidence of Completion as Hazmat First Responder Awareness Level Personnel or as Hazmat First Responder Operations Level Operative, a individual shall:

- ~~1. Successfully complete the hazardous materials first on the scene course by attaining a final score of 75% or better on the written exam; or~~
- ~~2. Successfully complete the hazardous materials first on the scene challenge exam, administered by the Division, by attaining a final score of 90% or better; and~~
- ~~3. Make an application on a form obtained from the Division which requires the applicant's name, address and test scores.~~
1. Submit a "Participant Application" form as described in R8-2-602(B) for Division sponsored courses. For non-Division sponsored courses, the applicant shall complete the course application contained in the student manual:
 - a. Course number: U100 or U200;
 - b. Course date;
 - c. Course name: First Responder Awareness Level or Hazmat First Responder Operations Level;
 - d. Applicant's name;
 - e. SSN;
 - f. Title;
 - g. Phone number;
 - h. Fax number, if any;
 - i. Organization;
 - j. Electronic address; and
 - k. Work mailing address, city, state, zip and county.
2. Successfully complete the Hazmat First Responder Awareness Level course, or the Hazmat First Responder Operations Level course, and attain a score of 75% or above on the written exam.

B. ~~Persons certified as hazardous materials first on the scene personnel shall receive a certification from the Division. The Division shall issue Evidence of Completion to an individual who successfully completes the Hazmat First Responder Awareness Level course or the Hazmat First Responder Operations Level course. The employer of an individual issued Evidence of Completion shall be responsible for maintaining the individual's competency under 29 CFR 1910.120(Q)(6) and (Q)(i)(ii); published by the United States Government Printing Office and revised July 1, 2001, with no later editions or amendments. This regulation is incorporated by reference and on file with the Division and the Office of the Secretary of State.~~

R8-2-606. ~~First on the scene pilot program certification~~ Repealed

~~Persons having successfully completed the Division's hazardous materials first on the scene course in its pilot form between January 1985 and July 1988 shall be certified as hazardous materials first on the scene personnel.~~

R8-2-607. ~~First responder program and instructor certification~~ Repealed

A. ~~Standardized curriculum:~~

- ~~1. All certified hazardous materials first responder training programs shall be conducted in accordance with the standardized curriculum as maintained and on file with the Division. The Division shall promptly notify all certified instructor of any changes in the curriculum.~~
- ~~2. Hazardous materials first responder training programs shall consist of the hazardous materials first responder course.~~
- ~~3. Topics covered in the hazardous materials first responder course are:-~~
 - ~~a. Hazard recognition and identification;~~
 - ~~b. Reference materials;~~
 - ~~c. Basic chemical and physical properties of hazardous materials;~~
 - ~~d. Personnel protection and safety;~~
 - ~~e. Scene management; and~~
 - ~~f. Planning considerations.~~

B. ~~Instructors and instructor certification:~~

- ~~1. Each hazardous materials first responder course shall have an instructor certified by the Division.~~
- ~~2. The Division shall certify instructors for the hazardous materials first responder course who have submitted the following:~~
 - ~~a. Evidence of successful completion of the Division's first responder instructor workshop by attaining a final score of 90% on the written exam and by demonstrating appropriate educational methodology and instructional techniques during an oral presentation.~~

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- b. Evidence of two years' experience in hazardous materials response and verification of a minimum of 240 hours of hazardous materials training approved by the Director.
- e. A letter of recommendation from the applicant's employer.
- d. A resume describing the applicant's experience in hazardous materials response and the applicant's experience as a trainer.

3. Certification shall be valid for two years.

R8-2-608. ~~First responder instructor certification renewal and recertification~~ Repealed

- ~~A.~~ Certified instructors may renew their certification by attending an instructor refresher workshop sponsored by the Division within six months of the expiration date of their current certification.
- ~~B.~~ Instructors who fail to maintain their current certification shall make application to the Division for recertification and shall successfully complete the first responder instructor workshop by attaining a final score of 90% on the written exam and by demonstrating appropriate educational methodology and instructional techniques during an oral presentation.

R8-2-609. ~~First responder administrative requirements~~ Repealed

- ~~A.~~ Certified instructors shall notify the Division 30 days prior to the delivery of the hazardous materials first responder course.
- ~~B.~~ Certified instructors shall provide the Division with the date, time, location and estimated number of students, 30 days prior to course delivery.
- ~~C.~~ Following the delivery of the hazardous materials first responder course, certified instructors shall provide the Division with student attendance and performance records and a course completion report.
 - 1. The course completion report requires the name of the instructor, date and location of the training, number of students registered and number of students successfully completing the course.
 - 2. Course completion report forms are available from the Division.
- ~~D.~~ Records of instructor certification and student certification shall be maintained at the Division.

R8-2-610. ~~First responder student certification~~ Repealed

- ~~A.~~ Persons shall be certified as hazardous materials first responder personnel who:
 - 1. Successfully complete the hazardous materials first responder course by attaining a final score of 75% or better on the written exam; or
 - 2. Successfully complete the hazardous materials first responder challenge exam administered by the Division by attaining a final score of 90% or better; and
 - 3. Make application on a form provided by the Division which requires the applicant's name, mailing address and test scores.
- ~~B.~~ A person certified as a hazardous materials first responder shall receive a certificate from the Division and list of recommended equipment for each hazardous materials first responder vehicle or unit.
- ~~C.~~ Certification shall be valid for two years.

R8-2-611. ~~First responder pilot program certification~~ Repealed

- ~~A.~~ Persons having successfully completed the Division's first responder course in its pilot form between January 1987 and July 1988 shall be awarded certification as hazardous materials first responder personnel.
- ~~B.~~ This certification shall be valid for two years.

R8-2-612. ~~First responder recertification~~ Repealed

- ~~A.~~ Applicants for recertification as hazardous materials first responder personnel shall successfully complete a first responder refresher course, sponsored by the Division, by attaining a final score of 75% or better on a written examination and shall make application to the Division within six months of the expiration date of their current certification on a form provided by the Division which requires the applicant's name, mailing address and test scores.
- ~~B.~~ Recertification is valid for two years.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

PREAMBLE

1. Sections Affected

Article 13
R18-2-1301

Rulemaking Action

New Article
New Section

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R18-2-1302	New Section
R18-2-1303	New Section
R18-2-1304	New Section
R18-2-1305	New Section
R18-2-1306	New Section
R18-2-1307	New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 49-425

Implementing statutes: A.R.S. §§ 1-215(4) and 49-411; Laws 2002, Ch. 260, §§ 19-21; Laws 2002, Ch. 328, § 28

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 8 A.A.R. 3936, September 13, 2002

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mark Lewandowski

Address: Arizona Department of Environmental Quality
1110 W. Washington
Phoenix, AZ 85007

Telephone: (602) 771-2230

Fax: (602) 771-2366

5. An explanation of the rule, including the agency's reasons for initiating the rule:

Summary. These proposed rules would continue and facilitate implementation of the Diesel Conversion Grant Program already implemented by the Arizona Department of Commerce (ADOC) under A.R.S. § 41-1516, and transferred to ADEQ by HB 2099 of the 2002 Second Regular Session. The goal of the Diesel Conversion Grant Program is to lower on-road vehicle emissions in area A and area B by reducing emissions from large diesel vehicles in those areas.

Since the mid-1990s, the Legislature has created several alternative fuel tax incentives and grants to encourage the use of alternative fuel and the purchase, lease, or conversion of alternative fuel vehicles. The ADOC was authorized to provide grants under this program until August 22, 2002, at which time HB 2099 transferred the program to the Arizona Department of Environmental Quality. The Diesel Conversion Grant Program has been modified somewhat since its inception in 2000, and currently applies to certain diesel vehicles with a Gross Vehicle Weight Rating of 19,500 pounds or more that will be Arizona-registered for three or more years and operated more than 50% of the time in Area A or Area B. Through HB 2708 (2002 Second Regular Session), this latest phase of the program allows monies to be encumbered before actual conversion through issuance of a pre-approval letter. The grant is for the cost of conversion or \$30,000, whichever is less.

These proposed rules would implement the statutory requirements by providing specific requirements and procedures for grant applicants. By establishing procedures for processing applications and awarding grants, the rules provide fairness and ensure continuity with the conversion grant program rule previously in place.

Emission Benefits. Although A.R.S. § 49-411 allows grants for the conversion of diesel vehicles to any of a number of alternative fuels, ADEQ expects that the primary type of conversion that will be employed by persons seeking a grant under these rules will be to an engine capable of running on a mixture of approximately 85% compressed natural gas (CNG), and 15% diesel, through a process called pilot injection. CARB has certified systems of this type for certain Caterpillar engine families for 1994 and later vehicles. Based on these certifications, and assuming the converted vehicles are used in applications where CNG refueling facilities are available and CNG is the primary fuel (this configuration can be operated on diesel only), ADEQ has estimated potential emission benefits. Each converted new vehicle's emissions will be below current federal standards for the following four regulated pollutants: non-methane organic compounds (NMOC), carbon monoxide (CO), nitrogen oxides, (NOx), and particulates. Specific reductions will depend on the model year, type, and condition of the vehicle being converted. In addition, ADEQ expects actual emission benefits compared to the unconverted, diesel only engine for NOx, particulates, and NMOC. Based on data from the CARB certifications, CO emissions are expected to increase somewhat compared to the unconverted diesel engine, but remain substantially under the federal standard of 15.5 grams/brake horsepower-hour.

Program Beginning and End. A.R.S. § 49-411 and the ADEQ's ability to encumber funds for this program became effective on August 22, 2002, but A.R.S. § 49-411 is repealed after June 30, 2003 (Laws 2002, Ch. 260, § 21 [HB

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2099)). Due to the possibility of actual payments being made 225 days after funds can be encumbered (See Laws 2002, Ch. 328, § 28 [HB 2708] and proposed R18-2-1304(F)(1), 180 days on the application priority list + one 45 day extension) it would be possible for grants to be paid as late as February 10, 2004 (June 30, 2003 + 225 days).

Immediate Effective Date. Under A.R.S. § 41-1032 as amended by Laws 2002, Ch. 334 (SB 1339), an agency that wants a rule to become effective immediately on filing with the Secretary of State must demonstrate that one of five criteria apply. Two criteria apply to these rules.

These rules provide a benefit to the public and a penalty is not associated with a violation of the rule.

These rules facilitate the awarding of grants for conversion of diesel vehicles to alternative fuel under A.R.S. § 49-411. The public benefits in two ways. First, the conversion of diesel vehicles results in cleaner air, and public health will benefit. Second, the conversion of diesel vehicles benefits the state economy due to the fact that most, if not all conversions will take place in Arizona, and revenue (from the Clean Air Fund) will be reintroduced into the Arizona economy. Although R18-2-1304(C)(2) recites consequences associated with perjury and untrue statements, participation in the grant program itself is voluntary, and the consequences are associated with violations of the statutory conditions for the grants. There are no violations of the rule that bring penalties.

To comply with deadlines in amendments to an agency's governing statute, if the need for an immediate effective date is not created by the agency's delay or inaction.

The deadline for awarding grants is June 30, 2003, because, under statute, ADEQ's ability to award these grants ends then. This rule is necessary to award grants. ADEQ opened the docket on this rule the day after the implementing statute became effective, and filed the proposed rule one week after that.

- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

- 8. The preliminary summary of the economic, small business, and consumer impact:**

ADEQ has preliminarily assessed the economic impact on Arizona small businesses and the public as a result of these rules as minimal in terms of cost and time resources and moderate in terms of benefits. The rules require conversion vendors and grant applicants to provide the Department with certain documentation and to verify that documentation, if necessary. In return, through the award of a grant, a diesel vehicle's emissions are substantially improved and up to \$30,000 in revenue per vehicle is returned to the Arizona economy. The cost to provide copies of documentation for an application and the time to compile the required documentation and complete the application will minimally affect the small businesses and the public applying for a grant. The cost to ADEQ to process applications, verify eligibility, and distribute monies will moderately affect ADEQ, but no new staff will be hired. ADEQ estimates that the approximately one-half FTE needed for extra responsibilities will be absorbed by existing staff for approximately one year. The costs for developing communication materials and forms, printing, and mailing will be small.

In the year prior to August 22, 2002, the Department of Commerce distributed about one-half million dollars for conversions very similar to the ones provided for in these rules. The grants covered 19 vehicles and were for conversions to run on an 85/15 ratio of compressed natural gas to diesel. All of the conversions were done by primarily one conversion vendor.

- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: David Lillie, Economist

Address: ADEQ
1110 W. Washington
Phoenix, AZ 85007

Telephone: (602) 771-4461 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number)

Fax: (602) 771-2366

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10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Time: October 22, 2002, 1:30 p.m.

Place: 1110 W. Washington, Suite 250
Phoenix, AZ 85007

Nature: Public hearing with opportunity for formal comments on the record regarding the proposed rules. Please call (602) 771-4795 for special accommodations pursuant to the Americans with Disabilities Act.

Close of comment: 5:00 p.m., October 25, 2002

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL**

ARTICLE 13. ~~RESERVED~~ DIESEL CONVERSION GRANT PROGRAM

Section

<u>R18-2-1301.</u>	<u>Definitions</u>
<u>R18-2-1302.</u>	<u>Available Funds</u>
<u>R18-2-1303.</u>	<u>Eligibility</u>
<u>R18-2-1304.</u>	<u>Application Process</u>
<u>R18-2-1305.</u>	<u>Application Priority List and Grant Awards</u>
<u>R18-2-1306.</u>	<u>Grant Amount</u>
<u>R18-2-1307.</u>	<u>Informal Review; Appeal</u>

ARTICLE 13. ~~RESERVED~~ DIESEL CONVERSION GRANT PROGRAM

R18-2-1301. Definitions

The following definitions apply in this Article, unless the context otherwise requires:

1. "Alternative fuel" has the same meaning as its definition in A.R.S. § 1-215.
2. "Alternative fuel vehicle" means a self-propelled vehicle that is registered and titled in this state for operation on the highways and that is propelled by an alternative fuel.
3. "Application" means the application submitted to the Department as specified in R18-2-1304.
4. "Application priority list" means the list specified in R18-2-1305.
5. "Conversion" means modification of a diesel vehicle to operate on an alternative fuel.
6. "Cost of conversion" means the reasonable and customary cost of conversion, taking into account the parts and materials used, the usual hours required for conversion, and the prevailing hourly rate for labor of this type in the county where the conversion is accomplished.
7. "Diesel vehicle" means a vehicle that operates only on diesel fuel.
8. "Director" means the Director of the Department of Environmental Quality or designee.
9. "GVWR" means the gross vehicle weight rating, the maximum loaded weight for which the vehicle is designed, as specified by the vehicle manufacturer.
10. "MYD Alternative Fuel Certificate" means a form issued by the Arizona Department of Transportation Motor Vehicle Division certifying that the vehicle has been inspected and is equipped to operate on alternative fuel. An applicant shall obtain this Certificate from an:
 - a. Arizona Department of Environmental Quality waiver station, or
 - b. Arizona Department of Environmental Quality licensed third-party inspector.
11. "Pre-approval letter" means a letter issued by the Department as specified in R18-2-1304.

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R18-2-1302. Available Funds

Funds are available only as appropriated by the legislature. Once all available funds have been encumbered, the Department shall send written notification of this fact to all those who have submitted an application, but have not been included on the application priority list.

R18-2-1303. Eligibility

An applicant may submit an application if the applicant has a purchase order or contract that is dated on or after January 1, 2000, to convert a diesel vehicle and the vehicle meets the following criteria:

1. Has not previously been the subject of a grant under this program;
2. Has a GVWR of at least 19,500 pounds;
3. Is not a recreational vehicle as defined in A.R.S. § 28-3102;
4. Is registered in this state;
5. Will be registered in this state for at least three years from the date the vehicle is registered as an alternative fuel vehicle;
6. Will be operated more than 50 percent of the time in area A or area B as defined in A.R.S. § 49-541; and
7. Is subject to A.R.S. § 28-4032(A).

R18-2-1304. Application Process

A. All applications shall be submitted to the Department before 5:00 p.m., June 16, 2003.

B. The Department shall make application forms available to the public.

C. Applicant shall submit an application to the Department for each vehicle for which the applicant is claiming a grant. The application shall contain:

1. The application form prescribed by the Department with the following information included:
 - a. Applicant's status as an individual or a business;
 - b. Applicant's name, address, and telephone number;
 - c. If applicant is an individual, the individual's Arizona Drivers License number;
 - d. If applicant is a business, the applicant's:
 - i. Taxpayer Identification Number, and
 - ii. Authorized representative's name and title;
 - e. The vehicle's:
 - i. Vehicle identification number (VIN),
 - ii. Model year,
 - iii. Make,
 - iv. Model, and
 - v. GVWR;
 - f. From whom the applicant purchased or leased the vehicle, the contract for that transaction, and the contact's telephone number;
 - g. The Arizona registration date of the vehicle;
 - h. For the converted or to-be-converted vehicle:
 - i. The conversion vendor's name and business address, contact person, and the contact's telephone number,
 - ii. The conversion kit manufacturer and number, and
 - iii. The conversion date or expected conversion date;
 - i. The type of alternative fuel the converted vehicle uses or will use:
 - i. Compressed natural gas-CNG,
 - ii. Liquid natural gas-LNG,
 - iii. Propane,
 - iv. Electric,
 - v. Solar, or
 - vi. Hydrogen.
2. A signed and dated "Statement of Assurances" on a form prescribed by the Department that includes:
 - a. A statement signed by the applicant, under penalty of perjury, that the applicant intends:
 - i. To keep the vehicle registered in this state for at least three years from the date the vehicle is registered as an alternative fuel vehicle;
 - ii. To operate the vehicle more than 50 percent of the time in area A or area B as defined in A.R.S. § 49-541;
 - b. An additional statement that:
 - i. The applicant owns or leases the vehicle;
 - ii. The applicant has the vehicle titled, registered, and insured in Arizona or has so applied;
 - iii. The vehicle is not a recreational vehicle as defined in A.R.S. § 28-3102;

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- H.** If the Department determines that the vehicle specified in the application is not eligible for a grant, the Department shall notify applicant in writing of the determination, including the reason(s) for ineligibility.

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R18-2-1305. Application Priority List and Grant Awards

- A.** The Department shall maintain for public inspection an application priority list for approved applications, where grant priority is determined by the date of the contract or purchase order entered into by the applicant. If two or more vehicles have the same priority and there are insufficient funds to provide grants for each vehicle, the Department shall use a computer-based, random-number process to determine the order in which these vehicles will be eligible for grant funds.
- B.** Grants shall be awarded within 30 days of the date the Department notifies applicant in writing that it will pay applicant a grant award in the amount according to R18-2-1306.

R18-2-1306. Grant Amount

The director of the administrative services division or Department deputy director shall award grants for the lesser of the cost of conversion or \$30,000 to qualified applicants.

R18-2-1307. Informal Review; Appeal

- A.** Any interested party may request an informal review of:
1. A determination of eligibility for a grant under this Article;
 2. The applicant's priority in the awarding of the grants; or
 3. The amount of a grant under this Article.
- If such a request is made, the funds in dispute shall be reserved until the Director's decision after informal review under subsection (B).
- B.** A request under subsection (A) shall be made in writing, and received by the Director within 10 business days of the date of the determination. Unless the Director and the interested party agree otherwise, the informal review shall take place within 10 business days after the Director's receipt of the request. The Director shall arrange the date and location of the informal review with the interested party at least five business days before the informal review. The Director shall mail his or her decision on the informal review to the interested party within five business days after the informal review date. The Director's decision after informal review shall become final unless, within 30 days after applicant's receipt of the informal review decision, the interested party requests a hearing under R18-1-202.